IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3055 of 2006
Date of Decision: 23.8.2007

Hardial Singh ...Appellant

Versus

Dhanu Ram and others ...Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta.

Present: Shri Sudeep Mahajan, Advocate, for the appellant.

Shri Ashutosh Hoshiarpuri, Advocate, for the respondents.

HEMANT GUPTA, J.

Plaintiff No. 1- Hardial is in second appeal aggrieved against the judgment and decree passed by the Courts below, whereby the suit for permanent injunction restraining the defendants from interfering in exclusive possession of the entire taur by raising any wall therein, was dismissed. The plaintiffs also sought a decree for mandatory injunction in the event of the defendants succeeding in raising a wall.

It has been found that in previous litigation, this Court in judgment Exhibit P.3, returned a finding that the present appellant is one of the proprietor of Patti Rasal and co-owner in the joint holding. It was clarified that if the appellant was in possession, he could retain the same, till the land was partitioned. It was found that vide judgment Exhibit P.3, the defendants are found to be co-owners and in joint possession of the suit property along with the plaintiffs. It was found in the present

proceedings that the plaintiffs have failed to prove their exclusive possession over the suit property and, therefore, not entitled to permanent injunction. It was also found that no decree for mandatory injunction could be passed in respect of walls FH/2 and XYZ, which were raised by the defendants three years before filing of the suit.

Learned counsel for the appellant has vehemently argued that in judgment Exhibit P.3, the present appellant has been found to be in joint possession of the Taur and, therefore, one of the co-owners cannot be permitted to raise construction so as to oust the plaintiffs from the enjoyment of the joint possession.

If one co-owner is in exclusive possession of the joint property, the said co-owner is entitled to enjoy the possession thereof till such time, the joint property is partitioned by metes and bounds. Since the defendants are found to be in exclusive possession of a portion of the Taur and such possession is recognised by raising of a wall, it cannot be said that the plaintiffs have a right to seek demolition of such wall. A perusal of the site plan Exhibit P.1 produced on the records of the present appeal in fact, shows that the area in possession of the parties is almost the same. It is for the authorities dealing with the partition proceedings to examine the rights of the parties in minute detail so as to examine the share of the each of the parties.

In view of the above, the finding recorded that the defendants are in exclusive possession of the property in dispute, cannot be said to be suffering from any patent illegality or material illegality, which may give rise to any substantial question of law in the present second appeal.

Hence, the present appeal is dismissed.

However, it is open to any of the parties in the present lis to seek partition of the joint land, in accordance with law and any observation made herein, will not be taken into consideration by the authorities effecting the partition.

23-08-2007 (HEMANT GUPTA)
ds JUDGE